

PHULEL SINGH

v.

STATE OF HARAYANA

(Criminal Appeal No. 396 of 2010)

SEPTEMBER 27, 2023

**[B. R. GAVAI*, PAMIDIGHANTAM SRI NARASIMHA
AND PRASHANT KUMAR MISHRA, JJ.]**

Issue for consideration: *Whether in the totality of the circumstances, it can be said that the dying declaration (Ex. P.L.) is free from doubt; whether evidence prove beyond reasonable doubt that the deceased was harassed on account of non-fulfillment of demand of dowry.*

Evidence Act, 1872 – Dying Declaration – Dying declaration free from doubt or not – Doubt whether the dying declaration recorded was voluntary or it was tutored – Doubt regarding fitness of victim – Variation in statement made by victim:

Held: *The present case mainly rests on the dying declaration of the deceased – In the present case, the dying declaration is recorded by PW-5, Executive Magistrate – It is relevant to note that the deceased received burn injuries on 05.11.1991 but the dying declaration came to be recorded on 08.11.1991 after an application was made by the relatives of the deceased to the SDM – PW-5, Executive Magistrate, in his evidence, admitted that the boys (related to deceased), who had brought the application containing the order of the SDM had told him that the statement of the deceased should be recorded and that she was in a position to make the statement – He further admitted that those boys had told him that whatever they had to tell the deceased, they had told her and that he should accompany them to record her statement – There is a grave doubt as to whether the dying declaration recorded by PW-5, Executive Magistrate was a voluntary one or tutored at the instance of respondent No.5 – It is also doubtful as to whether PW-8 had really examined the deceased with regard to her fitness prior to her statement being recorded by PW-5,*

* Author

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Executive Magistrate – PW-8-doctor had further stated that the deceased had also narrated that her husband had extinguished fire by pouring water on her – In the totality of the circumstances, it cannot be said that the dying declaration (Ex. P.L.) is free from doubt. [Paras 10, 11, 12, 13 and 14]

Penal Code, 1860 – Dowry death – High Court partly allowed the appeal filed by the accused persons; accused no.1, father of the appellant herein was acquitted of the charge u/s. 304-B of the IPC, however, the conviction and sentence qua appellant was upheld – Propriety:

Held: *Dying declaration of deceased was not free from doubt – The most glaring aspect that is required to be considered is that the High Court itself has disbelieved the dying declaration insofar as father-in-law of the deceased is concerned – It is difficult to understand that how the same dying declaration could have been made basis for conviction of the appellant when the same was disbelieved insofar as another accused is concerned – PW-9-investigating officer had stated in his deposition that he had come to the conclusion that the present case was not a case u/s. 307 of IPC or s.498-A of IPC but a case u/s. 309 of IPC – He had further stated that during investigation, it was revealed that the deceased was short-tempered and that accused no.1 (father of appellant) was not there in the village on the fateful day – Insofar as harassment with regard to non-fulfillment of demand of dowry is concerned, except the vague allegation, there is nothing in their evidence to support the prosecution case – PW-6-Sarpanch of the village stated that he was informed by PW-4, father of the deceased that in-laws of the deceased were harassing her and therefore they should go to village, however, nothing was said regarding any harassment on account of non-fulfillment of demand of dowry – There is no evidence to prove beyond reasonable doubt that the deceased was harassed on account of non-fulfillment of demand of dowry – Therefore, no case u/s. 304-B of IPC is made out by the prosecution. [Paras 15, 16 and 17]*

Makhan Singh v. State of Haryana 2022 SCC OnLine SC 1019 – referred to.

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CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 396 of 2010.

From the Judgment and Order dated 24.07.2009 of the High Court of Punjab & Haryana at Chandigarh in CRLA No.909 of 1999.

Rajul Bhargav, Sr. Adv., Rajiv K. Garg, Ashish Garg, Lalit Nagar, T. L. Garg, Advs. for the Appellant.

Samar Vijay Singh, Raj Singh Rana, Keshav Mittal, Ms. Sabarni Som, Aman Dev Sharma, Pankaj Kumar Singh, Advs. for the Respondent.

The Judgment of the Court was delivered by

B. R. GAVAI, J.

1. This appeal challenges the judgment and order dated 24th July 2009 passed by the Division Bench of the High Court for the States of Punjab and Haryana in Criminal Appeal Nos. 413-DBA of 2001 and 909-SB of 1999 along with Criminal Revision No. 134 of 2000, wherein the Division Bench partly allowed the appeal filed by the accused persons; whereby Jora Singh (Accused No. 1), father of the appellant herein was acquitted of the charge under Section 304-B of the Indian Penal Code, 1860 ("IPC" for short) and the conviction and sentence qua the appellant herein rendered by the learned court of Mrs. Nirmal Yadav, Sessions Judge, Sirsa (hereinafter referred to as "the trial court") in Sessions Trial No. 122 of 1994 vide judgment and order dated 14th September 1999 for the offence punishable under Section 304-B of IPC and sentence to undergo rigorous imprisonment for a period of seven years was upheld. Whereas, Criminal Appeal No. 413-DBA of 2001 filed by the State of Haryana and Criminal Revision No. 134 of 2000 filed by Pavitar Singh (PW-3), brother of Kiran Kaur (hereinafter referred to as "deceased") challenging the acquittal of the accused persons for the charge under Section 302 of IPC were dismissed.
2. Shorn of details, the facts leading to the present appeal, are as under:
 - 2.1 The marriage between the deceased and the appellant was solemnized in March, 1987, and they were blessed with a girl and a boy. It is the prosecution case that the appellant used to harass the deceased on account of insufficiency of dowry. It is further the prosecution case that, succumbing to the demands of the appellant, the parents of the deceased paid Rs.20,000/- to the appellant in cash and in 1990, they gave a scooter and gold ornaments weighing

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2.5-3 tolas to the appellant. Further, the deceased would tell her parents and her brother about the harassment and ill-treatment meted out to her at the hands of the appellant whenever she visited her parental house and eventually refused to reside in the house of the appellant. However, on account of the assurance and responsibility undertaken by Mohan Singh, the son-in-law of Jora Singh, father-in-law of the deceased, she was brought back to her matrimonial house. Even then, the deceased was not treated properly by the appellant. According to the prosecution allegations, Pavitar Singh (PW-3), brother of the deceased had come to see the deceased at her matrimonial home in village Chatha about 3 to 4 days prior to the Diwali of 1991 when the deceased had informed him about the demand for dowry being made by the appellant and his family. When Pavitar Singh (PW-3) returned home and informed his parents about the said harassment being meted out to the deceased in lieu of demand for dowry, Randhir Singh (PW-4), father of the deceased, went to Major Singh (PW-6), Sarpanch of his village, who assured him that they would go to the house of the appellant for counselling them after Diwali. Following which, on 5th November 1991, i.e., on the festive day of Diwali, Dr. Sharma of Bhagwargarh had come to Rama Mandi. On his return, he informed Pavitar Singh (PW-3) and other family members that the deceased had been burnt and that she was being taken to Ludhiana. Thereupon, Pavitar Singh (PW-3), Randhir Singh (PW-4) and cousin Gur Raj Singh reached the Daya Nand Medical College and Hospital, Ludhiana (hereinafter referred to as "DMC, Ludhiana") where the deceased was admitted and lay unconscious. On 5th November 1991, Dr. Jasmeet Singh Dhir (PW-7), the Medical Officer at DMC, Ludhiana, who had medico-legally examined the deceased, opined that she had 91% burns on her body and accordingly sent *ruqa* (Ex.-P.J) to the Station House Officer (SHO), Police Station Sarabha Nagar, Ludhiana on the same day at about 05.10 p.m. regarding admission of the deceased in the hospital.

- 2.2 On 7th November 1991, when the deceased regained consciousness, she told Pavitar Singh (PW-3) and others that it was the appellant who had burnt her. Following which, Randhir Singh (PW-4) made an application (Ex. P.D./1) to the Sub-Divisional Magistrate (SDM), Ludhiana, for recording of the statement of the deceased. On the following day, i.e., 8th November 1991, Mr. Sadhu Singh (PW-5), the then Executive Magistrate, Ludhiana received the

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said application along with endorsements of the SDM, Ludhiana (Ex. P.D/2 and P.D/3). Upon receiving the same, the Executive Magistrate, Ludhiana reached the DMC, Ludhiana and moved another application (Ex. P.S.) before the Medical Officer at about 04.15 p.m. thereby seeking his opinion with regards to the fitness of the deceased. When Dr. Jatinder Pal Singh (PW-8) gave his opinion (Ex. P.S/1) that the deceased was fit to make a statement, Mr. Sadhu Singh (PW-5) proceeded to record the statement of the deceased (Ex. P.L.) on the same day at about 04.40 p.m. The statement was read over and explained to the deceased, who had put her thumb impression on the same after admitting to its contents to be correct. A First Information Report ("FIR" for short) (Ex. P.E./1) was recorded based on the said statement of the deceased against Jora Singh, father-in-law of the deceased, appellant herein and Dhan Kaur, mother-in-law of the deceased, for the offences punishable under Sections 498-A, 307, 406 and 34 of IPC. On 18th November 1991, at about 06.00 p.m., Dr. Jatinder Pal Singh (PW-8) sent *ruqa* (Ex. P.M.) to the Police Station Sarabha Nagar, Ludhiana, regarding the death of the deceased. Following which, the Assistant Sub Inspector (ASI), Sri Bhagwan (PW-9) prepared an inquest report at the DMC, Ludhiana on 19th November 1991 with regards to the dead body of the deceased and made an application for conducting of post-mortem examination as well (Ex. P.R./1).

- 2.3 Upon completion of investigation, a charge-sheet came to be filed in the court of jurisdictional Magistrate. Since the case was exclusively triable by the learned Sessions Judge, it came to be committed to the learned Sessions Court. Charges were framed for the offences punishable under Section 302 read with Section 34 of IPC and Section 304-B of IPC. The accused pleaded not guilty and claimed to be tried.
- 2.4 In order to substantiate the charges levelled against the accused persons, the prosecution examined as many as nine witnesses. Thereafter, the accused persons were examined under Section 313 of the Code of Criminal Procedure, 1973 ("Cr.P.C." for short). They denied the prosecution allegations regarding demand for dowry and harassment of the deceased and alleged that they were being falsely implicated. The accused persons also denied that the deceased was set ablaze by them. At the conclusion of trial,

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the learned trial court convicted all the three accused persons for the offence punishable under Section 304-B of IPC for causing the dowry death of the deceased and accordingly sentenced them to undergo rigorous imprisonment for a period of seven years along with fine. However, the learned trial court was pleased to extend the benefit of doubt qua the charge under Section 302 of IPC and thus, acquitted the accused persons of the said charge.

- 2.5 Being aggrieved thereby, the accused persons preferred an appeal before the High Court with regards to the conviction and sentence awarded by the learned trial court; whereas, the State of Haryana and Pavitar Singh (PW-3) also filed their respective appeals before the High Court with regards to the acquittal of the accused persons for the charge under Section 302 of IPC. The High Court, by the impugned judgement, while observing that the appeal preferred by Dhan Kaur, mother-in-law of the deceased stood abated as she had died during the proceedings; dismissed the appeals filed by the State of Haryana and Pavitar Singh (PW-3), and partly allowed the appeals filed by Jora Singh, father-in-law of the deceased and the appellant herein thereby acquitting Jora Singh, father-in-law of the charge levelled against him under Section 304-B of IPC, but confirmed the conviction and sentence awarded by the learned trial court to the appellant herein.
3. Being aggrieved thereby, the present appeal.
4. We have heard Shri Rajul Bhargav, learned Senior Counsel appearing on behalf of the appellant and Shri Samar Vijay Singh, learned counsel appearing on behalf of the State.
5. Shri Bhargav submitted that the trial court as well as the High Court has grossly erred in convicting the appellant. He submits that the reliance placed on the dying declaration is totally unsustainable. He submits that the very first information given by the deceased herself to the doctor while admitting to the hospital, would show that the deceased had put up kerosene on herself and set herself on fire. He submits that as a matter of fact, it is the present appellant who had tried to extinguish the fire. The learned Senior Counsel therefore submits that the subsequent dying declaration, which is recorded after 3-4 days of the accident, could not have been relied on by the courts. He submits that the said dying declaration was a tutored one at the instance of her relatives and the conviction solely based on the same is not sustainable. The learned

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Senior Counsel relies on a recent judgment of this Court in the case of ***Makhan Singh v. State of Haryana***¹ decided on 16th August 2022 to which two of us (B.R. Gavai, J., Pamidighantam Sri Narasimha, J.) were on the Bench.

6. Shri Bhargav further submitted that the case under Section 304-B of IPC is also not made out. He submitted that there is no evidence on record to show that the deceased was meted out to any harassment on account of non-fulfillment of demand of dowry. He submitted that even if the evidence of the relatives of the deceased is taken on face value, it would not show that there was any harassment to the deceased on account of non-fulfillment of demand of dowry. He submitted that even the evidence of independent witness Major Singh (PW-6), Sarpanch of the village would also not support the prosecution case.
7. Shri Singh, on the contrary, submitted that the prosecution has proved the case beyond reasonable doubt. He further submitted that the dying declaration is recorded by the Executive Magistrate. He further submitted that Dr. Jatinder Pal Singh (PW-8) has testified that the deceased was in the sound state of mind and fit to make the statement. He therefore submitted that the conviction recorded on the basis of the said dying declaration warrants no interference.
8. Shri Singh further submitted that the evidence of PWs 3 and 4, who were relatives of the deceased along with Major Singh (PW-6), Sarpanch of the village would establish, beyond all reasonable doubt, that the deceased was meted out harassment on account of non-fulfillment of demand of dowry. He therefore prays for dismissal of the present appeal.
9. With the assistance of the parties, we have perused the evidence and materials placed on record.
10. The present case mainly rests on the dying declaration of the deceased. No doubt, that a conviction can be solely recorded on the basis of dying declaration. However, for doing so, the court must come to a conclusion that the dying declaration is trustworthy, reliable and one which inspires confidence. In the present case, the dying declaration is recorded by Shri Sadhu Singh (PW-5), Executive Magistrate. He stated that he obtained the certificate from the doctor regarding the fitness of the deceased to make the statement. He further stated that he recorded the statement

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of the deceased and thereafter it was read over and explained to her. He further states that she had thumb marked the same after admitting its contents to be correct. In the dying declaration recorded by Shri Sadhu Singh (PW-5), Executive Magistrate, the deceased is said to have stated that on 5th November 1991 at around 12.00 noon, her husband Phulel Singh, i.e., the appellant herein, Jora Singh, father-in-law and Dhan Kaur, mother-in-law caught hold of her. Her husband, the appellant herein put kerosene on her person and set her ablaze. She further stated that when she was set on fire, she raised an alarm but the accused overpowered her.

11. It is relevant to note that the deceased received burn injuries on 5th November 1991 but the dying declaration came to be recorded on 8th November 1991 after an application was made by the relatives of the deceased to the SDM, Ludhiana. Shri Sadhu Singh (PW-5), Executive Magistrate, in his evidence, admitted that the boys, who had brought the application containing the order of the SDM, Ludhiana had told him that the statement of the deceased should be recorded and that she was in a position to make the statement. He further admitted that those boys had told him that whatever they had to tell the deceased, they had told her and that he should accompany them to record her statement. He has further admitted that those 2-3 boys were related to the deceased and some other persons were also in the room in which he recorded the statement of the deceased.
12. It could thus be seen that there is a grave doubt as to whether the dying declaration recorded by Shri Sadhu Singh (PW-5), Executive Magistrate was a voluntary one or tutored at the instance of respondent No.5. It is further relevant to note that Dr. Jatinder Pal Singh (PW-8), in his deposition itself, states that Shri Sadhu Singh (PW-5), Executive Magistrate had recorded the dying declaration of the deceased on 8th November 1991 at 04.40 p.m. whereas the opinion with regard to her fitness was given by him at 06.00 p.m. on 8th November 1991. He has further admitted that he had not mentioned in the bed-head ticket that he had attested the statement of the deceased at 04.40 p.m. on 8th November 1991. It is thus doubtful as to whether Dr. Jatinder Pal Singh (PW-8) had really examined the deceased with regard to her fitness prior to her statement being recorded by Shri Sadhu Singh (PW-5), Executive Magistrate.
13. It is further relevant to note that Dr. Jasmeet Singh Dhir (PW-7) has

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stated that the history recorded by him while admitting the deceased, was narrated by the deceased herself. He has further stated that the deceased had also narrated that her husband had extinguished fire by pouring water on her.

14. In the totality of the circumstances, it cannot be said that the dying declaration (Ex. P.L.) is free from doubt.
15. The most glaring aspect that is required to be considered is that the High Court itself has disbelieved the dying declaration insofar as Jora Singh, father-in-law of the deceased is concerned. We fail to understand as to how the same dying declaration could have been made basis for conviction of the appellant when the same was disbelieved insofar as another accused is concerned.
16. It will also be apposite to refer to the deposition of Shri Bhagwan, ASI, Investigating Officer (PW-9). He has stated in his deposition that he had come to the conclusion that the present case was not a case under Section 307 of IPC or Section 498-A of IPC but a case under Section 309 of IPC. He has further stated that the higher authorities that is Shri Sukhdev Singh, DSP and Shri Rajinder Singh, SHO had verified the investigation conducted by him and found the same as correct and agreed with his conclusions. He has further stated that during investigation, it was revealed that the deceased was short-tempered and that accused Jora Singh was not there in the village on the fateful day and that he had gone to Rama Mandi for making purchases for Diwali.
17. Insofar as the evidence regarding harassment on account of non-fulfillment of demand of dowry is concerned, the prosecution relies on the evidence of Pavitar Singh (PW-3), brother of the deceased, Randhir Singh (PW-4), father of the deceased and Major Singh (PW-6), Sarpanch of the village. Insofar as PWs 3 and 4 are concerned, they are relatives of the deceased and their evidence will have to be scrutinized with greater care, caution and circumspection. Insofar as harassment with regard to non-fulfillment of demand of dowry is concerned, except the vague allegation, there is nothing in their evidence to support the prosecution case. Insofar as Major Singh (PW-6), Sarpanch of the village is concerned, he stated that he was informed by Randhir Singh (PW-4), father of the deceased that in-laws of the deceased were harassing her and therefore they should go to village Chatha. However, he also does not state that he was informed by Randhir Singh (PW-4), father of the deceased that the deceased was meted out to any harassment on

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account of non-fulfillment of demand of dowry. We are therefore of the considered view that there is no evidence to prove beyond reasonable doubt that the deceased was harassed on account of non-fulfillment of demand of dowry. We therefore find that the case under Section 304-B of IPC is not made out by the prosecution.

18. In the result, we pass the following order:
- (i) The appeal is allowed;
 - (ii) The judgment and order of conviction as recorded by the trial court dated 14th September 1999 and affirmed by the High Court vide its impugned judgment and order dated 24th July 2009 are quashed and set aside; and
 - (iii) The appellant is acquitted of all the charges levelled against him and his bail bonds shall stand discharged.
19. Pending application(s), if any, shall stand disposed of in the above terms.

Headnotes prepared by : Ankit Gyan

Result of the case : Appeal allowed.